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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,335	09/24/2001	Kenneth A. Klarfeld	MET1.0023	2141

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EXAMINER

LAYE, JADE O

ART UNIT PAPER NUMBER

2617

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/963,335		KLARFELD ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jade O. Laye		2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

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### *Election/Restrictions*

I. Applicant's timely election with traverse of Claim Group III (Claims 20-31) in the reply filed on 12/19/05 is acknowledged. Claims 1-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Claim Groups I and II.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

II. Claims 20-29 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by *Ellis et al.* (US Pat. No. 6,898,762).

As to Claim 20, *Ellis* discloses a system and method which processes a viewer profile and provides program listings which correspond to the viewer profile. In addition, the user can select from a variety of alternate profiles, thereby providing an alternate listing of programs. (Abstract; Col. 2, Ln. 13-63; Col. 14, Ln. 25-65; Fig. 13a-14). When the user selects an alternate profile, he

or she is, in essence, “requesting a different selection” as recited in Claim 1. Accordingly, *Ellis et al* anticipate each and every limitation of Claim 20.

Claims 28 and 29 are encompassed within the limitations of Claim 20. Thus, each is analyzed and rejected as previously discussed.

As to Claim 21, the various profiles disclosed under the rejection of Claim 20 can also contain alternative viewer characteristic information. (citations of Claim 20). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 21.

As to Claim 22, *Ellis* further teaches the system can contain various profiles for any number of users. (citations of Claim 20). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 22.

As to Claims 23 and 24, *Ellis* further teaches the system can integrate demographic information into its processes, which can comprise various data such as user specific genres and rating preferences (i.e., generic info). (Col. 19, Ln. 26-33; Col. 23, Ln. 50-60; Fig. 15; citations of Claim 20). Accordingly, *Ellis et al* anticipate each and every limitation of Claims 23 and 24.

As to Claim 25, *Ellis* further teaches the user is allowed to select between various profiles (i.e., replace viewer profile with alternative profile). (citations of Claim 20). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 25.

As to Claim 26, *Ellis* further teaches the viewer is allowed to edit the alternative profiles. (Col. 15, Ln. 15-28). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 26.

As to Claim 27, the user could randomly select any of the profiles. (citations of Claim 20). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 27.

As to Claim 31, *Ellis* further teaches the system can display a list of programs and their associated characteristics. (Fig. 15; Col. 15, Ln. 55-63). Accordingly, *Ellis et al* anticipate each and every limitation of Claim 31.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

III. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ellis et al* in view of *Shah-Nazaroff et al.* (US Pat. No. 6,317,881).

Claim 30 recites the method of Claim 28, wherein the list is sorted in accordance with the degree of correspondence between the characteristics of each selected program and the viewer profile. As discussed above, *Ellis et al* anticipate each and every limitation of Claim 28, but fail to disclose those of Claim 30. However, within the same field of endeavor, *Shah-Nazaroff* discloses a similar system which ranks programs according to their respective correlation to a user profile. (Fig. 3). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of *Ellis* and *Shah-Nazaroff*, thereby providing a system which makes it easier for the user to determine the programming best fitting his or her preferences.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. *Maissel et al* (US Pat. No. 6,637,029) disclose a similar system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye  
Initials: JO  
January 14, 2006.



VIVEK SRIVASTAVA  
PRIMARY EXAMINER